Re Dato Narendrakumar Jasani a/l Chunilal Rugnath v Shencourt Properties Sdn Bhd (in liquidation) (Ricky Thong Yew Fook, proposed intervener)

HIGH COURT (KUALA LUMPUR) — POST COMPANY WINDING UP CASE NO WA-28PW-312–11 OF 2021
NADZARIN WOK NORDIN JC
1 MARCH 2022

Civil Procedure — Intervener — Right to intervene — Proposed intervener filed notice of motion to intervene in applicant's application seeking remuneration of joint liquidator — Whether proposed intervener's rights and interest as joint liquidator would be directly affected by outcome of applicant's application — Whether delay was material factor in determining application to intervene — Whether proposed intervener ought to be allowed to intervene — Rules of Court 2012 O 15 r 4(2) & O 92 r 4

Companies and Corporations — Liquidators — Remuneration — Remuneration of liquidators in winding up by court — Proposed intervener filed notice of motion to intervene in applicant's application seeking remuneration of joint liquidator — Whether proposed intervener failed to satisfy requirement under s 479(2) of Companies Act 2016 — Companies Act 2016 s 479(2)(a) & (2)(b)

The applicant and the proposed intervener were the joint liquidators of the respondent before being discharged by the Court of Appeal's order dated 18 January 2019. The applicant had filed a notice of motion seeking remuneration ('encl 1' or 'PW338') as the joint liquidator pursuant to the court order dated 26 April 2011 ('26 April 2011 order'). The proposed intervener then filed the present amended notice of motion ('encl 7' or 'the motion') pursuant to O 15 r 4(2) and O 92 r 4 of the Rules of Court 2012 and/or the inherent jurisdiction of the court for an order that: (a) the proposed intervener be granted leave to intervene in encl 1; (b) the proposed intervener be added as the co-applicant; (c) the intitulment be amended by adding the proposed intervener as the co-applicant; (d) that the applicant shall serve all the cause papers to the proposed intervener and the proposed intervener to be granted leave to file any cause papers including but not limited to affidavits on behalf of the co-applicant; (e) that the orders prayed in encl 1 be amended by adding the following: 'that the applicant and co-applicant remuneration as the joint liquidators for the respondent from the period 26 April 2011 to 19 February 2019 to be fixed by this court on a single fee of remuneration'; (f) costs; and (g) such further or other relief as the court deemed fit and

necessary. The issue was whether the proposed intervener ought to be allowed to intervene in PW338.

Held:

(1) It was clear from the wordings in para (c) of the 26 April 2011 order that the effect of the order was to add the applicant as a joint liquidator of the respondent company and that the said appointment was subjected to a single set of fees. In the circumstances, the applicant should have added the proposed intervener as the co-applicant in PW338 as any determination of PW338 without the presence of the proposed intervener would be prejudicial to the proposed intervener because his rights and interest in relation to his remuneration as a joint liquidator of the respondent company would be directly affected by the outcome of PW338 (see paras 12 & 14).

(2) The applicant's contention that PW338 did not affect the works carried out by the proposed intervener was misconceived as the court would only be able to determine the same with the presence of and after hearing the proposed intervener as well. This would be crucial to eliminate any duplicity of billings which would affect the respondent company and/or more importantly the respondent's company's creditors. Further, the court would need the full and entire picture of the work done by both joint liquidators to determine the 'one' or 'single' set of fees as per the 26 April 2011 order (see paras 14–16).

(3) In relation to the delay in filing the motion, if it was proven that the proposed intervener's rights would be directly affected by the outcome of PW338 and the court had not yet made a decision in PW338, the issue of delay was not a material factor in determining an application to intervene as in the motion herein. Nevertheless, the court found that the reasons for the delay in filing PW338 given by the proposed intervener was unsatisfactory and therefore, the court ordered costs of RM10,000 to be paid to the applicant (see paras 17 & 22–23).

(4) The proposed intervener could not circumvent the requirements of s 479(2) of the Companies Act 2016 ('the CA 2016') and he must present his bills to the creditors before coming directly to the court for his bills to be considered. Considering the above reasons, the court granted order in terms for paras 1 to 4 of the motion in encl 7. The court would allow para 5 of the motion subject to the proposed intervener presenting his bills to the creditors for his bills to be considered in accordance with s 479(2)(a) and (b) of the CA 2016 and the court directed pursuant to para 7 of the motion that the official receiver fix a creditors' meeting at the earliest possible time to consider and decide on the proposed intervener's bill (see paras 20–21 & 23).

[Bahasa Malaysia summary

Pemohon dan pencelah yang dicadangkan adalah penyelesai bersama bagi responden sebelum ditamatkan perkhidmatan melalui perintah Mahkamah Rayuan bertarikh 18 Januari 2019. Pemohon telah memfailkan notis usul untuk mendapatkan saraan ('lampiran 1' atau 'PW338') sebagai penyelesai bersama menurut perintah mahkamah bertarikh 26 April 2011 ('perintah 26 April 2011'). Pencelah yang dicadangkan kemudiannya memfailkan notis usul terpinda ('lampiran 7' atau 'usul tersebut') menurut A 15 k 4(2) dan A 92 k 4 Kaedah-Kaedah Mahkamah 2012 dan/atau bidang kuasa sedia ada mahkamah bagi perintah supaya: (a) pencelah yang dicadangkan diberi kebenaran untuk mencelah dalam lampiran 1; (b) pencelah yang dicadangkan ditambah sebagai pemohon bersama; (c) intitulmen dipinda dengan menambah pencelah yang dicadangkan sebagai pemohon bersama; (d) bahawa pemohon hendaklah menyampaikan semua kertas kausa kepada pencelah yang dicadangkan dan pencelah yang dicadangkan diberi kebenaran untuk memfailkan apa-apa kertas kausa termasuk tetapi tidak terhad kepada afidavit-afidavit bagi pihak pemohon bersama; (e) bahawa perintah yang dimohon dalam lampiran 1 dipinda dengan menambah yang berikut: 'that the applicant and co-applicant remuneration as the joint liquidators for the respondent from the period 26 April 2011 to 19 February 2019 to be fixed by this court on a single fee of remuneration'; (f) kos; dan (g) apa-apa relif lanjutan atau lain-lain yang difikirkan patut dan perlu oleh mahkamah. Isu yang perlu ditentukan adalah sama ada pencelah yang dicadangkan patut dibenarkan untuk mencelah dalam PW338.

Diputuskan:

(1) Jelas daripada ayat di perenggan (c) perintah 26 April 2011 bahawa kesan perintah tersebut adalah untuk menambah pemohon sebagai penyelesai bersama syarikat responden dan pelantikan tersebut tertakluk kepada satu set yuran. Dalam keadaan tersebut, pemohon sepatutnya menambah pencelah yang dicadangkan sebagai pemohon bersama dalam PW338 kerana apa-apa penentuan PW338 tanpa kehadiran pencelah yang dicadangkan akan memudaratkan pencelah yang dicadangkan kerana hak dan kepentingannya berhubung dengan saraannya sebagai penyelesai bersama syarikat responden akan terjejas secara langsung oleh keputusan PW338 (lihat perenggan 12 & 14).

(2) Hujahan pemohon bahawa PW338 tidak menjejaskan kerja-kerja yang dijalankan oleh pencelah yang dicadangkan adalah salah tanggap kerana mahkamah hanya akan dapat menentukan perkara tersebut dengan kehadiran dan selepas mendengar pencelah yang dicadangkan juga. Ini adalah penting untuk menghapuskan apa-apa perduaan pengebilan yang akan menjejaskan syarikat responden dan/atau lebih penting lagi pemiutang-pemiutang syarikat responden. Selanjutnya, mahkamah

memerlukan gambaran penuh dan keseluruhan kerja yang dilakukan oleh kedua-dua penyelesai bersama untuk menentukan set yuran yang 'satu' atau 'tunggal' mengikut perintah 26 April 2011 (lihat perenggan 14–16).

(3) Berhubung dengan kelewatan memfailkan usul, sekiranya terbukti bahawa hak pencelah yang dicadangkan akan terjejas secara langsung dengan keputusan PW338 dan mahkamah masih belum membuat keputusan dalam PW338, isu kelewatan bukanlah faktor material dalam menentukan permohonan untuk mencelah seperti dalam usul semasa. Namun begitu, mahkamah mendapati alasan kelewatan memfailkan PW338 yang diberikan oleh pencelah yang dicadangkan adalah tidak memuaskan dan oleh itu, mahkamah mengarahkan kos sebanyak RM10,000 dibayar kepada pemohon (lihat perenggan 17 & 22–23).

(4) Pencelah yang dicadangkan tidak boleh melangkau keperluan s 479(2) Akta Syarikat 2016 ('AS 2016') dan dia mesti mengemukakan bilnya kepada pemiutang-pemiutang sebelum datang terus ke mahkamah untuk dipertimbangkan bilnya. Berdasarkan alasan-alasan di atas, mahkamah membenarkan perintah mengikut terma-terma untuk perenggan 1 hingga 4 usul dalam lampiran 7. Mahkamah akan membenarkan perenggan 5 usul tersebut tertakluk kepada pencelah yang dicadangkan mengemukakan bilnya kepada pemiutang-pemiutang untuk dipertimbangkan bilnya berdasarkan s 479(2)(a) dan (b) AS 2016 dan mahkamah mengarahkan menurut perenggan 7 usul tersebut agar pegawai penerima menetapkan mesyuarat pemiutang-pemiutang dalam masa terdekat untuk mempertimbangkan dan memutuskan berkaitan bil pencelah yang dicadangkan (lihat perenggan 20–21 & 23).]

Cases referred to

Arab Malaysian Merchant Bank Bhd v Jamaludin bin Dato Mohd Jarjis [1991] 2 MLJ 27, SC (refd)

Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622; [2008] 2 CLJ 121, FC (refd)

Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52; [1968] 1 MLRA 925, PC (refd)

Pilecon Engineering Bhd v Malayan Banking Berhad & Ors [2012] 3 MLRH 639, HC (refd)

Poly Ritz Development Sdn Bhd & Anor v Datuk Tee Guan Pian [2020] MLJU 2517, HC (refd)

Legislation referred to

Companies Act 2016 s 479(2), (2)(a), (2)(b)

Rules of Court 2012 O 15 r 4(2), O 92 r 4

Collin Goonting (Darren Tay with him) (Collin Goonting & Assoc) for the applicant.

Muhammad Iqram bin Zulkupri (Azman Davidson & Co) for the proposed intervener.

Sufi Nasuha bt Abdul Halim (Malaysian Department of Insolvency) for the official receiver.

Nadzarin Wok Nordin JC:

[1] By way of an amended notice of motion dated 21 September 2021 (motion) in encl 7, Ricky Thong Yew Fook, the proposed intervener herein (proposed intervener) has applied to this court pursuant to O 15 r 4(2) and O 92 r 4 of the Rules of Court 2012 and/or the inherent jurisdiction of this court for, inter alia, an order that:

(a) the proposed intervener be granted leave to intervene in the notice of motion of Dato Narendra Kumar Jasani a/l Chunilal Rugnath (applicant) the abovenamed applicant in the intitulment dated 21 September 2020 (encl 1) which was filed in Action No WA-28PW-338–09 of 2020 (PW338);

(b) the proposed intervener be added as the co-applicant in this action;

(c) the intitulment in this action be amended by adding the proposed intervener as the co-applicant;

(d) that the applicant shall serve all the cause papers in these proceedings to the proposed intervener within seven days from the date of this order and the proposed intervener to be granted leave to file any cause papers including but not limited to affidavits on behalf of the co-applicant;

(e) that the orders prayed in the applicant's notice of motion dated 21 September 2020 (encl 1) be amended by adding the following:

> (a) that the applicant and co-applicant remuneration as the joint liquidators for the Respondent form the period 26.4.2011 to 19.2/2019 to be fixed by this Court on a single fee of remuneration

(f) costs; and

(g) such further or other relief as this court deems fit and necessary.

[2] The grounds in support of the motion are, inter alia, as follows:

(a) by a court order dated 4 February 2004, the proposed intervener was appointed as the liquidator for the respondent;

(b) on or about after seven years the proposed intervener acted as the sole liquidator for the respondent, the applicant was subsequently appointed as the joint liquidator for the respondent by virtue of the court order dated 26 April 2011;

(c) pursuant to the court order dated 26 April 2011, the court has directed that the remuneration for the joint liquidators shall be subjected to a single fee of remuneration for a liquidator;

(d) both the applicant and the proposed intervener have been discharged as the joint liquidators for the respondent by the Court of Appeal on 18 January 2019 and the Court of Appeal further ordered that the applicant and the proposed intervener to hand over all the files belonging to the respondent to the official receiver;

(e) on 21 September 2020, the applicant has filed encl 1 in this action to seek for the remuneration as the joint liquidator and pursuant to the court order dated 26 April 2011 and the proposed intervener is therefore entitled jointly to the remuneration as the joint liquidator to be fixed by this honourable court; and

(f) the proposed intervener should be given a right to be heard in this action.

BACKGROUND FACTS

[3] The chronology of events has been set out as follows:

Date	Event
19 April 2002	The respondent was ordered to be wound up by the High Court of Kuala Lumpur vide Winding Up Petition No D4-28–44.
4 February 2004	The High Court ordered that proposed intervener be appointed as the liquidator of the respondent.
24 February 2011	The petitioners filed an application to remove the proposed intervener as the liquidator for failure to carry out his duties.
26 April 2011	By a court order dated 26 April 2011, the applicant was appointed as the joint liquidator of the respondent.
30 October 2017	Shencourt Sdn Bhd filed an application to remove the joint liquidators. On 9 February 2018, the High Court dismissed the removal application. Shencourt Sdn Bhd then appealed against the decision in the Court of Appeal.

18 January 2019	By a Court of Appeal order dated 18 January 2019, both the proposed intervener and the applicant were discharged as the joint liquidators of the respondent and was replaced by the official receiver.
19 February 2019	Pursuant to the Court of Appeal order dated 18 January 2019, the applicant handed over all documents belonging to the respondent to the official receiver. During the handover to the OR, the applicant had allegedly also submitted an invoice dated 14 December 2018 being his fees for work done pursuant to the invoice amounting to RM5,172,705.35 in respect of the liquidation of the respondent.
27 July 2020	The OR by an email dated 27 July 2020 directed the applicant to make an application pursuant to s 479(2) of the Companies Act 2016.
21 September 2020	Upon the OR's instructions, Suit No WA-28PW-338–09 of 2020 was filed.

PROPOSED INTERVENER'S SUBMISSIONS

[4] The proposed intervener had averred that despite the proposed intervener's attempts to follow up on his remuneration with the official receiver (OR), no satisfactory response was received.

[5] It was further submitted by the proposed intervener that:

(a) despite the High Court order of 26 April 2011 ('26 April 2011 order') wherein the applicant was appointed as joint liquidator of the respondent company from the date of the order and that the said appointment was subjected to a single set of fees, the applicant had proceeded to file PW338 without informing the proposed intervener beforehand or even naming the proposed intervener as the co-applicant in PW338;

(b) any determination of PW338 would directly affect the proposed intervener's rights and interest; and

(c) there is no unreasonable delay in filing the motion.

APPLICANT'S OPPOSITION TO MOTION

[6] The applicant has submitted amongst others that:

(a) the proposed intervener's motion is unlawful and an abuse of court process;

(b) the proposed intervener ought to have exhausted his rights under s 479(2)(a) and (b) of the Companies Act 2016 prior to coming to this court under the motion herein;

(c) the proposed intervener did not submit his bills to the OR nor did he attend the creditors meeting held on 14 October 2021;

(d) no creditors meeting has been held to decide on proposed intervener's bills;

(e) the proposed intervener is thereby circumventing the presentation of his bills to the creditors by coming directly to this court;

(f) the proposed intervener should not be allowed to piggy back on the applicant's application in PW338;

(g) PW338 was filed at the direction of the OR after the applicant had been following up with the OR to inquire on the status of his bills;

(h) PW338 does not affect the works carried out by the proposed intervener as it concerns only the work done by the applicant from 26 April 2011 to 18 January 2019 as joint liquidator;

(i) the proposed intervener would have no interest in the work carried out by the applicant as he has also carried out his part of the work;

(j) separate works were carried out by the joint liquidators; and

(k) the proposed intervener has not objected to the applicants works in PW338 nor the amount of remuneration claimed and as the proposed intervener's work will have to be assessed for two different periods ie 4 February 2004 to 26 April 2011 and from 26 April 2011 to 18 January 2019 it would therefore be more convenient to assess the proposed intervener's work done in a separate application.

FINDINGS AND DECISION

[7] I have carefully considered the written and oral submissions from both counsels of the respective applicant and the proposed intervener and herewith are my findings and/or decision herewith.

[8] It is trite that in an application to intervene the proposed intervener must fulfill the test in: (a) *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52; [1968] 1 MLRA 925; and (b) *Pilecon Engineering Bhd v Malayan Banking Berhad & Ors* [2012] 3 MLRH 639 where the Privy Council in *Pegang Mining* held:

> In their Lordships' view one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action

A without his being given an opportunity of being heard. To achieve this object calls for a flexibility of approach which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases.

B **[9]** I have also taken note of the Supreme Court case of *Arab Malaysian Merchant Bank Bhd v Jamaludin bin Dato Mohd Jarjis* [1991] 2 MLJ 27, which was referred to me by counsel for the proposed intervener, wherein it was held:

> One of the class of cases covered by the said rule, which allows intervention by persons not parties, is where the proprietary or pecuniary rights of the intervener are directly affected by the proceedings or where the intervener may be rendered liable to satisfy any judgment either directly or indirectly. The ambit of this class has been materially widened by the decision of the UK Court of Appeal in *Gurtner v Circuit* [1968] 1 All ER 328, the effect of which is to include any case in which the intervener is directly affected not only in his legal rights but in his pocket.

C

D

[10] Although *Arab Malaysian Merchant Bank Bhd* involved a case where the respondent therein, who had undertaken to pay the debt of the judgment debtors, would not only be affected in his legal rights but also in his pocket in that he would be bound to foot a larger bill if the judgment in default which includes excessive interest is not set aside; I nevertheless am of the view that the decision therein can be applicable in a case where an interested party's rights will be legally affected including that where such a party's pocket will be affected.

E

F

[11] In coming to my decision on whether the proposed intervener should be allowed to intervene in PW338, I had examined the High Court order of 26 April 2011 ('26 April 2011 order') which can be seen in exh RT2 of encl 2 and which had in para (c) of the said 26 April 2011 order stated (in Bahasa Malaysia):

G

> (c) Dato Narendra Kumar Jasani a/l Chunilal Rugnath (no. K.P ...) dari Tetuan Grant Thornton Consulting Sdn Bhd dilantik sebagai Pelikuidasi bersama Ricky Thong Yew Fook kepada Responden mulai traikh Perintah ni tertakluk kepada fee satu wang Pelikuidasi dan arahan-arahan lain yang Mahkamah akan berikan apabila kedua-dua Pelikuidasi hadir di hadapan Mahkamah.

H

[12] It is clear from the wordings in para (c) of the 26 April 2011 order that the effect of the said order was to add the applicant as a joint liquidator of the respondent company from the date of the 26 April 2011 order and that the said appointment was subjected to a single set of fees. I am therefore in agreement with the proposed intervener's counsel that in the circumstances, the applicant should have added the proposed intervener as the co-applicant in PW338 as

I

any determination of PW338 would directly affect the proposed intervener's rights and interest vis a vis the proposed intervener's remuneration as a joint liquidator of the respondent company. A

[13] The court would not be able to properly adjudicate PW338 without the proposed intervener being added as a party therein and being given a right to be heard in PW338. In other words, this court will require the presence of the proposed intervener in PW338 to effectually and effectively determine the remuneration of the joint liquidators of the respondent company due to the 26 April 2011 order. B C

[14] I also hold that based on the facts before me, any determination of PW338 without the presence of the proposed intervener will be prejudicial to the proposed intervener as his legal interests and rights as well as his pocket will be directly affected by the outcome of PW338 and that the applicant's contention that PW338 does not affect the works carried out by the proposed intervener as it concerns only the work done by the applicant from 26 April 2011 to 18 January 2019 as joint liquidator as being misconceived as this court will only be able to determine the same with the presence of and after hearing the proposed intervener as well. This would at the end of the day be crucial to eliminate any duplicity of billings which will affect the respondent company and/or more importantly the respondent company's creditors. D E

[15] I have considered the applicant's contention that the proposed intervener would have no interest in the work carried out by the applicant as he has also carried out his part of the work. With respect I am also unable to agree with this point raised as the court will need the full and entire picture of the work done by both joint liquidators to determine the 'one' or 'single' set of fees as per the 26 April 2011 order, and needless to say whether the proposed intervener has any interest in the work carried out by the applicant or separate works were carried out by the joint liquidators would surely be for this court to eventually determine after having the full set of facts and/or details of the work done by both the joint liquidators. F G

[16] On the same reason as in the above paragraph, I am rejecting the applicant's submission that the proposed intervener has not objected to the applicants works in PW338 nor the amount of remuneration claimed and as the proposed intervener's work will have to be assessed for two different periods ie 4 February 2004 to 26 April 2011 and from 26 April 2011 to 18 January 2019, it would therefore be more convenient to assess the proposed intervener's work done in a separate application. H I

[17] On the issue of unreasonable delay in filing the motion, I hold that so long as it is proven that the proposed intervener's rights will be directly affected

by the outcome of PW338 and the court has not yet made a decision in PW338, the issue of delay is not a material factor in determining an application to intervene as in the motion herein. Authority for this can be found in the Supreme Court case of *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121 where it was held:

> ... an application for leave to intervene in order to set aside an order for sale by a party not already a party to the proceedings must be made under O 15 r 6 of the RHC 1980. The application may be made 'at any stage of the proceedings' meaning before judgment, otherwise the proceedings have concluded and there is no longer a proceeding in existence for the party to intervene in. The judge has also become functus officio. Even then, the application must be made promptly. Order 15 r 6 of the RHC 1980 applies to all civil proceedings whether commenced by a writ, motion or summons etc.

[18] I must now address s 479(2)(a) and (b) of the Companies Act 2016 which states:

> (2) A liquidator other than the Official Receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by:
>
> (a) an agreement between the liquidator and the committee of inspection, if any;
>
> (b) where there is no agreement or where there is no committee of inspection, a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or
>
> (c) if the agreement or determination under paragraph (a) or (b) fails, the Court.

[19] In *Poly Ritz Development Sdn Bhd & Anor v Datuk Tee Guan Pian* [2020] MLJU 2517 this court had held that:

> [20] In other words, a reading of the said s 479(2) of the Companies Act 2016 mandates that there must either be: (a) an agreement with the Committee of Inspection (COI) as to the liquidators fees or alternatively; (b) a resolution passed at a meeting of creditors in accordance with sub s 479(2)(b) of the Companies Act 2016 before the court may determine the liquidators remuneration. I am of the view that the failure to comply with either of the above sub sections will render this court being unable to hear the application due to the express words in sub-s 479(2)(c) of the Companies Act 2016 which clearly specifies 'if the agreement or determination

under paragraph (a) or (b) fails, the court' which indicates that only if either sub-s (a) or (b) fails, then and only then will the court be able to determine the salary or remuneration of a liquidator.

[20] In light of my decision in *Poly Ritz Development Sdn Bhd*, it is also my decision that the proposed intervener cannot circumvent the requirements of the said s 479(2) of the Companies Act 2016 and that he must present his bills to the creditors before coming directly to this court for his bills to be considered.

[21] Be that as it may and from all of the above, it is my decision that:

(a) the applicant is an interested party whereby any determination of the prayer sought for in respect of the remuneration of any of the joint liquidators ie the applicant and the proposed intervener herein will directly affect the rights and interest of both the said parties; and

(b) to enable this court to effectively determine PW338, the proposed intervener must present his bills to the creditors at a creditor's meeting before coming directly to this court.

[22] Although this court had held earlier on in its decision herein held that the delay in filing the motion was not a material factor in determining an application to intervene, never the less I find the reasons for the delay in filing PW338 given by the proposed intervener in his affidavit in reply in encl 10 as being unsatisfactory and I hereby exercise my discretion to order costs to be paid to the applicant in PW338 for the motion herein.

[23] I hereby grant order in terms for paras 1–4 of the motion in encl 7. I will allow para 5 of the motion subject to the proposed intervener presenting his bills to the creditors for his bills to be considered in accordance with s 479(2)(a) and (b) of the Companies Act 2016 and I direct pursuant to para 7 of the motion that the OR fix a creditors meeting at the earliest possible time to consider and decide on the proposed intervener's bill. I further order costs of RM10,000 for this motion to be paid by the proposed intervener to the applicant in PW338.

Order accordingly.

Reported by Dzulqarnain Ab Fatar